

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 595 of 1988
with
Civil Application No.4628 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Special Land Acquisition Officer

Versus

Natwarlal Chunilal Patel

Appearance:

Mr. L.R. Pujari, AGP, for appellant/applicant
MR DK ACHARYA for Respondents/Opponents

CORAM : MR.JUSTICE J.N.BHATT and MR.JUSTICE M.H.KADRI

Date of decision: __/11/97

ORAL JUDGMENT: (Per: Kadri,J.) Date:_____

Special Land Acquisition Officer, Narmada Project, Unit 3, Vadodara, has filed First Appeal, under Section 54 of the Land Acquisition Act, 1894 ('Act' for short), read

with Section 96 of the Code of Civil Procedure, 1908 ('Code' for short), challenging judgment and award dated November 6, 1987, passed by the learned District Judge, Banaskantha, at Palanpur, in the Land Reference Case No.4 of 1985.

The facts, in brief, leading to filing of the First Appeal, are as under: The Chief Engineer, Narmada Project, Gandhinagar, had forwarded a proposal, by his letter dated August 13, 1981, for acquisition of land of Radhanpur Town, bearing Revenue Survey No.356/A/1, and City Survey No.6540, admeasuring 1 Heatare-29 Are-59 sq.mtrs ('acquired land' for short), to the office of the Special Land Acquisition Officer, Vadodara. Land acquisition proceedings were initiated for acquisition of the acquired land and notification under Section 4(1) of the Act was published in the official gazette on June 10, 1982, and notification under Section 6 of the Act was published in the official gazette on October 9, 1982. Notices under Section 9 of the Act were issued to the persons interested and objections were also invited. It transpires that possession of the acquired land was taken on June 27, 1981, and the respondents were paid interim compensation at the rate of Rs.20/- per sq.mtr. The Land Acquisition Officer made necessary enquires to determine market price of the acquired land. The respondent was heard by the Land Acquisition Officer and, after following the necessary procedure under the Act, and after considering documentary evidence in the nature of sale instances, the Land Acquisition Officer had declared his award on April 22, 1985, and awarded compensation for the acquired land to the claimants at the rate of Rs.3.50 ps. per sq.mtr.

The respondent-claimant, feeling aggrieved by the said award, filed application under Section 18 of the Act to refer the case for additional compensation to the District court. At the instance of the respondent-claimant, the Land Acquisition Officer referred the case to the District Court, Banaskantha, at Palanpur, which was numbered as Land Acquisition Reference No. 4/85.

According to the claimant, the acquired land is situated on the northern side of Ahmedabad-Bhuj Highway in Radhanpur Town and the land has got potential value. There are housing societies and Jalaram Restaurant near the acquired land. There are also government offices and godowns, oil mills and other shops nearby the acquired land. Therefore, according to the claimant, the land has got commercial value. The claimants, therefore, claimed

compensation at the rate of Rs.55/- per sq.mtrs.

Before the reference court, the respondent-claimant as well as the acquiring body led oral as well as documentary evidence in support of their case. Respondent, Natwarlal Chunilal Patel, examined himself at Exh.28. On behalf of the claimant, Prabhubhai Ramjibhai Panchal, at Exh.34, Mahendrakumar Girdharlal Patel, at Exh.57, Hariram Shivaram Thakkar at Exh.58, were examined. The acquiring body examined Deputy Executive Engineer, Gordhanbhai Vallabhbhai Bhatt, at Exh.60. The respondent as well as the acquiring body produced documentary evidence on the record, which will be discussed at the latter part of the judgment as and when found necessary.

The learned District Judge, Banaskantha, at Palanpur (hereinafter referred to as 'reference court'), after appreciating oral as well as documentary evidence, determined the market price of the acquired land at the rate of Rs.37 per sq.mtr. The reference court has also awarded compensation for the well situated in the acquired land at Rs. 5251/- and for price of 'thala' constructed near the well at Rs. 1408.50 ps., and Rs.550/- for the price of trees standing on the acquired land. The reference court also awarded to the claimant statutory benefits under Section 23(1-A), solatium under Section 23(2) and interest under Section 28 of the Act.

The appellant, by way of filing the present First Appeal, has challenged the judgment and award of the reference court in this court.

The claimant has also filed cross objection for enhancement of compensation at Rs.55 per sq.mtrs.

Pending hearing and final disposal of the First Appeal, the appellant filed Civil Application No.4628 of 1994, permitting him to lead additional evidence under the provisions of Order 41 Rule 27 of the Code on the ground that the Land Acquisition Officer had declared his award on relying upon the report of the Deputy Town Planning Officer, dated March 15, 1984. According to the appellant-applicant, the report of the Deputy Town Planning Officer could not be produced on record during the trial before the reference court and, therefore, he may be permitted to produce the said report as additional evidence in this court. The respondent-opponent filed his reply opposing the application for production of additional evidence, inter alia, contending that no cogent and convincing reasons have been assigned by the

appellant-applicant for leading additional evidence as per the provisions of Order 41 Rule 27 of the Code. It is averred that the report of the Deputy Town Planning Officer, Mehsana, was already in possession of the applicant, and, in spite of that fact, he has not produced it before the reference court and, therefore, he may not be permitted to produce the said report before this court by leading additional evidence.

Before permitting additional evidence to be produced in the appellate court, the following conditions should be satisfied:

- (i) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
- (ii) The party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
- (iii) The appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.

In our opinion, the report of the Deputy Town Planning Officer was already in possession of the appellant-applicant during the trial before the reference court. It is not the case of the appellant-applicant that notwithstanding the exercise of due diligence, such evidence was not within his knowledge, or could not, after the exercise of due diligence, be produced by him before the reference court. In our opinion, this court does not require additional evidence to enable it to pronounce judgment, or for any other substantial cause. Therefore, in our opinion, the application for additional evidence deserves to be rejected. Hence, Civil Application No.4628 of 1994 is rejected.

Learned Assistant Government Pleader Mr.L.R. Pujari, on merits, submitted that the reference court erred in relying upon the sale instances produced by the respondent, and in fixing the market price of the acquired land on the basis of the said sale instances. It is submitted that the sale instances relied upon by the respondent were with respect to small pieces of the lands, whereas the acquired land was having area of about 12959 sq.mtrs and, therefore, those sale instances cannot

form basis in determining the market price of the acquired land. It is, further submitted by the learned Assistant Government Pleader that the Land Acquisition Officer had determined just and reasonable amount of compensation for the acquired land and, therefore, the additional amount awarded by the reference court deserves to be reduced and the appeal requires to be allowed.

On the other hand, learned advocate, Mr. Acharya, appearing for the respondent-claimant, submitted that the acquired land was converted into non-agricultural land and it was situated in the most developed locality having commercial activities and the acquired land was having building potentiality and commercial value. It is submitted that in the town of Radhanpur, only acquired land having large area was available for construction of housing colony for the employees of the Narmada Project, and, therefore, while fixing the market price of the acquired land, non-availability of the land in Radhanpur should be taken into consideration. The learned advocate for the respondent has, further, submitted that the acquired land is situated in the city of Radhanpur, and railway station and town of Radhanpur is about 1 k.m. away from the acquired land. It is, further submitted that, adjacent to the acquired land, there are government offices, highway of Gandhinagar-Palanpur and, therefore, the land has got a special value. It is, further, submitted that the reference court had, after taking into consideration the sale instances, and the report of the Town Planner, had determined the market price of the acquired land at Rs.37/- per sq.mtr. and, therefore, the appeal deserves to be dismissed.

Submission of the learned Assistant Government Pleader that the reference court has erred in relying upon the sale instances relating to small pieces of land, which is improper, deserves to be accepted. The Apex Court, in Land Acquisition Officer & Sub-Collector, Gadwal, vs. Sreelatha Bhoopal (Smt) and another, reported in (1997) 9 Supreme Court Cases 628, observed that, it is now well-settled legal position that small pieces of land cannot offer the same market value as when a large tract of land is purchased in an open market by a willing and prudent purchaser. In the case of K.S. Shivadevamma vs. Assistant Commissioner & Land Acquisition Officer, reported in AIR 1996 Supreme Court 2886, the Apex Court has ruled that sale deed of small piece of land relied upon by the claimant cannot form basis for determining compensation for large extent of land. In view of the settled principles of law, we accept the submission of learned Assistant Government Pleader that the reliance

placed on the sale instances relating to small pieces of land cannot form basis for determining the market price of the acquired land which are having large extent of area.

The respondent, in order to justify the claim of compensation at Rs.55/- per sq.mtr, has produced sale deed (Exh.30) by examining Mahendrakumar Girdhanlal Patel at Exh.57. The father of witness Mahendrakumar had purchased one piece of land admeasuring 100 sq.mtr in 1981 in the area of Laldarwaja in the town of Radhanpur for a consideration of Rs.4000/-. Price of the land, which is the subject matter of sale instance at Exh.30, comes to Rs.40/- per sq.mtr. The original sale deed was submitted to the Bank for obtaining loan and, therefore, a xerox copy of the sale deed was produced which was taken on record by the reference court.

The respondent also relied upon sale deed Exh.33, which was with respect to land admeasuring 27.45 sq.mtrs sold for a consideration of Rs.5000.00. The said sale deed is proved through witness Hariram Shivram Thakkar, who had purchased land on July 7, 1981 for construction of a shop. The land under sale deed Exh.33 was situated in the locality of Lalbaug, which is adjacent to the acquired land. Price of the land purchased under sale deed Exh.33 comes to Rs.182/- per sq.mtr.

In our opinion, both the sale deeds relied upon by the respondent in the reference court do not reflect the correct market price prevailing at the relevant time. Moreover, the lands, which were subject matter of both sale deeds, were of small pieces of land and, therefore, the said sale deeds cannot form basis for determining the market price of the acquired land, which was having large extent of area.

The learned advocate for the respondent has, vehemently, submitted that, the respondent was paid interim compensation for the acquired land at the rate of Rs.20/per sq.mtr., as possession of the land was taken by the acquiring body on June 27, 1981, before issuance of Section 4(1) notification. It is submitted that the award of the Land Acquisition Officer produced on the record of the case at Exh.39 also shows that the land was situated in the developed area, and, on the southern side, there was national highway of Ahmedabad-Bhuj. He submitted that, surrounding the acquired land, commercial activities had already started and the respondent had converted the acquired land for non-agricultural use and, therefore, the acquired land has got building

potentiality. It is, further, submitted that, as per the report of the Special Survey Officer, Radhanpur, (Exh.41), price of the lands situated within the city survey area of town Radhanpur, can be assessed ranging from Rs.20/- to Rs.55/-. The learned advocate for the respondent has, further, submitted that, when the acquiring body had paid interim compensation to the respondent at the time of taking possession, i.e., on June 27, 1981, at the rate of Rs.20/- per sq.mtr., the award of the Land Acquisition Officer determining the market price of the acquired land at Rs.3.50 per sq.mtr is, highly, arbitrary, illegal and unjust. Submission of the learned advocate for the respondent deserves consideration. In our opinion, if the respondent-claimant was given interim compensation for the acquired land, at the time of taking possession of the acquired land in the year 1981, at the rate of Rs.20/per mtr., obviously, the Land Acquisition Officer had erred in fixing the market price of the acquired land at Rs.3.50 ps per sq.mtr. The reliance placed on the sale deed (Exh.30) by the respondent can be taken into consideration if some deduction is allowed for development of the acquired land, because it was having large extent of land. The lands, which were subject matter of sale deed (Exh.30) was having small pieces of land admeasuring about 100 sq.mtrs. In K.S. Shivadevamma (supra), the Apex Court, while determining the market price of the land having larger extent of area, had relied upon the sale deed of small piece of land by deducting some percentage for development of the lands having large extent of area. Sale deed (Exh.33) was executed on July 7, 1981 and market price of the land was Rs.182.00 per sq.mtr. In our opinion, the vendor had paid a fancy price for the land under sale deed Exh.33. Therefore, sale deed Exh.33 cannot be relied on in determining the market price of the lands. The claimants as well as the acquiring body had produced certified copies of the sale deeds on the record before the reference court. It is, now, settled legal principle laid down by the Apex Court, in various decisions, that, in absence of adduction of any evidence through the vendor or the vendee, the document, per se, cannot be relied upon. (See: (1997) 10 Supreme Court Cases 128 - A.P. State Road Transport Corporation, Hyderabad vs. P.Venkaiah and others).

Other sale deed (Exh.30) is also of the year 1981 and the purchaser had paid Rs.4000.00 towards consideration for the land having the area of 100 sq.mtrs. Therefore, the market price of the land under sale deed (Exh.30) would come to Rs.40/- per square meter. As stated earlier, the acquired land was,

already, converted for non-agricultural use. The respondent must have spent considerable amount for converting the acquired land for non-agricultural use. The lands of Lalbaug of Radhanpur Town were also divided into small plots and the small plots were sold by the Ex-Ruler of Radhanpur State. If the respondent was to divide the land in small plots, he would have incurred expenses for dividing the land, making roads, etc., on the acquired land. Therefore, in our opinion, at least 25% should be deducted towards costs for dividing lands and making roads on the acquired land. It should not be forgotten that the land under acquisition was having commercial potentiality. Surrounding the acquired land, many commercial activities had come up. The acquired land was also abutting on the National Highway leading from Palanpur to Bhuj. The acquired land was also surrounded by government offices, S.T. Bus-stand, Jail and Court premises. Therefore, we are of the opinion that the acquired lands were situated in the developed area and the respondent-claimant was only required to divide the land to sell it at a higher price. In our opinion, to determine the market price of the acquired land, help of sale deed (Exh.30) can be taken into account. As the lands of sale deed (Exh.30) were having small area, some deduction is to be allowed, as the acquired land was having large extent of area. We deem it proper to deduct an amount of 25% towards costs of dividing land and for making it into small pieces and providing roads and sub-ways on the land in question. The market price of the land under sale deed (Exh.30) is Rs.40/- per sq.mtr. If the costs for dividing the lands and making roads, etc., are deducted, then market price of the acquired land can be determined at Rs.30.00 per sq.mtr at the relevant time. In our opinion, taking into consideration the totality of the circumstances, situation of the land and also large area of the land, Rs.30/- per sq.mtr would be the just, adequate, proper market price to be awarded to the claimants for the acquired land. It is, now, settled legal principles of law that merely producing copies of sale deeds is not a legal evidence unless they are proved by oral evidence. Vendor and vendees of other sale instances which were produced on record were not examined and, therefore, we deem it not to consider the said sale instances for determining the market price of the acquired land.

The learned Assistant Government Pleader has also challenged the impugned judgment and award of the reference court by submitting that the reference court has erred in awarding price of the well situated on the acquired land. In support of his submission, he placed

reliance in the case of O.Janardhan Reddy & others vs. The Sol. Dy. Collector, L.A. unit-IV, LMD, Karimnagar, reported in JT 1994 (6) S.C.366. In the said case before the Apex Court, compensation for well situated in the agricultural land was awarded by the court below. The Apex Court, while disallowing the claim of costs of well situated in the agricultural land, has held that, when the lands are assessed as irrigated land, no separate compensation for the well situated on the irrigated land can be awarded. In our opinion, the law laid down by the Apex Court in O.Janardhan Reddy will not apply to the facts of the present case. In the present case, the land was not used for agricultural purpose since long and was converted into non-agricultural use.

The Land Acquisition Officer had also awarded Rs.5251.00 for well situated on the acquired land by taking into consideration the fact that the acquired land was non-agricultural land and as the well was situated in the nonagricultural land, price of well after deducting depreciation, can be awarded and, therefore, he awarded Rs.5251/- as net amount of compensation to be awarded for price of the well. The reference court has also awarded Rs.5251/- for the price of the well to the respondent. Therefore, we are of the opinion that the amount paid as price for the well by the reference court deserves to be confirmed.

The reference court has also awarded Rs.1408.50 ps for the 'thala' and Rs.550/- for the trees situated on the acquired land, which, in our opinion, does not require any interference and the amount awarded for the said items deserves to be confirmed.

In view of the discussion with regard to determination of market price of the acquired land, there is no justification to award enhanced compensation to the claimant as claimed by him in his cross objection. No reliable evidence was led by the claimant justifying his claim of Rs.55.00 per sq.mtr as market price of the acquired land. The reference court had also not accepted the claim of the respondent at Rs.55.00 per sq.mtr. We do not find any cogent evidence on record of the case which justifies the claim of market price at Rs.55.00 per sq.mtr for the acquired land. We, therefore, do not find any merit in the cross objections filed by the respondent and, hence, are dismissed with no order as to costs.

In the result, First Appeal No.595 of 1988 filed by the Special Land Acquisition Officer is, partly, allowed. The award of the reference is modified to the extent that

the market price of the acquired land is determined at Rs.30.00 per sq.mtr, instead of Rs.37.00 per sq.mtr. determined by the reference court. The award of the reference court with regard to compensation for well, thala and trees, is, hereby, confirmed. The respondent shall be entitled to receive additional amount as per the provisions of Section 23(1-A) of the Act as awarded by the reference court. The respondent is also entitled to statutory benefit of solatium at the rate of 30% under Section 23(2) of the Act and interest under Section 28 of the Act, as amended. Cross-objections filed by the respondent shall also dismissed. Civil Application No.4628 of 1994, for additional evidence, is dismissed. There shall be no order as to costs in all the three proceedings in this Court.

(swamy)